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In The

Supreme Court of the United States

October Term, 1978

No. 78-1439

THOMAS W. COHN, MARY P. COHN, DONALD F. MacLEOD, PATRICIA A. MacLEOD, BETSY PALMER, FRANCIS GEORGE du PONT, JR., PATRICIA S. du PONT, S. PETER LAW, ANNE P. LAW, BARBARA GILLMAN, JOHN H. SQUADRA, DAISY S. SQUADRA, WILLIAM J. DRENSER, PATRICIA A. DRENSER, ANDREW J. O'CONNELL, JR., BETH S. O'CONNELL, THOMAS P. KULINA, MERI STEVENS KULINA, FREDERICK C. GRAY, AVIS Z. GRAY, PETER G. DIAMANDIS, JOAN L. DIAMANDIS, EHRICK K. HAIGHT, RHODA R. HAIGHT, DAVID H. ANDERSON, SUSAN B. ANDERSON, DONALD SCHULTZ, JOANNE V. SCHULTZ, LOUIS A. LEHNER, URSULA S. LEHNER, RONALD C. ERNI, JANE HOPE ERNI, DOROTHY W. ROSE, JOHN P. VEREL AND MARY B. VEREL

Petitioners

v.

CITY OF NORWALK PLANNING AND ZONING COMMISSION AND ROCK LEDGE CORPORATION

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Connecticut entered in the above case on December 20, 1978.

Opinions Below

The memorandum opinion of the Connecticut Superior Court for the Judicial District of Fairfield at Stamford, as yet unreported, is presented in Appendix B hereto. The decision of the Supreme Court of the State of Connecticut, issued on December 20, 1978, as yet unreported, is presented in Appendix B hereto and the denial of the Petitioners' Motion for Reconsideration, issued by the Supreme Court of the State of Connecticut on January 11, 1979, and as yet unreported, is presented in Appendix B hereto.

Jurisdiction

The judgment of the Supreme Court of the State of Connecticut was entered on December 20, 1978. A Motion for Reconsideration of that judgment was denied on January 11, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

Questions Presented

WHETHER THE RESPONDENT COMMISSION'S ACTIONS FOLLOWING A PUBLIC HEARING IN WHICH THE PETITIONERS HAD PARTICIPATED VIOLATED THE PETITIONERS' DUE PROCESS RIGHTS TO A FAIR HEARING PROCEDURE?

WHETHER THE RESPONDENT COMMISSION VIOLATED THE PUBLIC'S RIGHT TO BE HEARD AT THE

ZONE CHANGE HEARING BY A COMMISSION RULING THAT ONLY THOSE MEMBERS OF THE PUBLIC WHO SIGNED AN OPPONENTS' SPEAKERS LIST IN ADVANCE OF HEARING THE CORPORATE APPLICATION WOULD BE PERMITTED TO SPEAK IN OPPOSITION AFTER THE CORPORATE PRESENTATION?

WHETHER THE CONNECTICUT SUPREME COURT PREJUDICED THE PETITIONERS' DUE PROCESS RIGHTS TO APPELLATE REVIEW BY FAILING TO PROVIDE REASONS FOR ITS DENIAL OF CERTIFICATION OF THE PETITIONERS' APPEAL?

Constitutional Provisions, Statutes and Regulations Involved

The judgments of the Courts below violate Petitioners' rights under the First, Fifth and Fourteenth Amendments to the United States Constitution. Other statutes and regulations involved are set forth in Appendix A hereto.

Statement of the Case

The petitioners in the above-entitled action all own homes and reside across the street from or near the 15.48 acre tract of land known as Rock Ledge in the Rowayton section (Sixth Taxing District) of Norwalk, Connecticut. They seek a writ of certiorari to the Connecticut Supreme Court to challenge on constitutional grounds the procedures employed by the respondent Norwalk Planning and Zoning Commission in granting a change of zone of the Rock Ledge tract from residential to research and development use.

On December 1, 1976, respondent Rock Ledge Corporation applied to the respondent Norwalk Planning and Zoning Commission for a change of zone of the Rock Ledge premises from AA Residential (one-half acre, single family residential zoning)

to Research and Development zone to construct a world headquarters in Rowayton for its parent corporation, Continental Group.

On January 12 and 13, 1977, the defendant Commission conducted a public hearing to receive evidence concerning the zone change application. Only the persons who signed an opponents' speakers list circulated by the Commission *prior* to hearing the corporate presentation were permitted to speak afterward in opposition to the corporate presentation. Petitioner Betsy Palmer (who was not then represented by counsel) did not sign the speakers list. When she asked the chairman for permission to speak at the public hearing in opposition to the corporate application, the chairman denied her this right. Those petitioners who were represented by counsel cross-examined the corporate witnesses. Those petitioners (and other opponents to the application) who had signed the speakers list were then permitted to offer as evidence their testimony and documentary exhibits.

The cross-examination, testimony and documentary exhibits focused upon the zoning application as measured by the lack of safeguards to the public of the existing research and development zoning regulations in Norwalk, because a majority of the Planning and Zoning Commission itself, by Memorandum dated September 15, 1976, had also criticized the R-D regulations for their "lack of safeguards."

On April 6, 1977, almost three months subsequent to the zoning hearing, the respondent Commission amended in substantial part its substantive Research and Development zone regulations. Within moments thereafter on said April 6, 1977, the Commission applied the new Research and Development Regulations retrospectively to the respondent corporation's pending application for a zone change by granting the application under the *new* regulations. The Commission did not hold a public hearing subsequent to enacting the new regulations to permit the public to contest the corporate application as measured against the new regulations.

The petitioners then filed a timely appeal with the Connecticut Superior Court for the Judicial District of Fairfield at Stamford to challenge on constitutional and statutory grounds the Commission's decision as well as the procedures which it used to govern the public hearing and the decision-making process. The appeal was tried together with appeals which the petitioners filed from the granting of a Special Permit by the respondent Planning and Zoning Commission to Rock Ledge Corporation to construct the Continental Group world headquarters at said premises (*Cohn, et al* v. *Norwalk Planning and Zoning Commission, et al.*, D.N. 19849) and the granting of a Major Generator Certificate by the State Traffic Commission to the Rock Ledge Corporation (*Cohn, et al.* v. *State Traffic Commission,* D.N. 20023). In its Memorandum of Decision dated November 14, 1978 (Appendix B), the Superior Court in one opinion dismissed all three appeals on the merits and the petitioners then filed their Petitions for Certification in all three cases. The Supreme Court of Connecticut denied without opinion certification of the three appeals and also denied, without opinion, the petitioners' Motions for Reconsideration as well. The petitioners are seeking review by Writ of Certiorari only of the Connecticut Supreme Court's decision in the zone change appeal (first appeal).

The federal questions at bar were raised below in a timely and appropriate fashion. The Fair Hearing and Speakers' List issues were raised both in the pleadings before the Connecticut Superior Court and in the Petition for Certification to the Connecticut Supreme Court, as more particularly set forth in Appendix B. The trial court addressed these issues in its Memorandum of Decision, presented in Appendix B. The Connecticut Supreme Court denied certification of the case without opinion, and also denied without opinion the Motion for Reconsideration presented in Appendix B.

Promptly upon receipt of the Denial of Certification, the petitioners raised in their Motion for Reconsideration the constitutional issue of whether the Connecticut Supreme Court was

required under principles of appellate due process to provide reasons for its Denial of Certification.

Reasons for Granting the Writ

Certiorari should be granted in this case because it involves important constitutional issues of due process, freedom of expression, and fair appellate procedure.

I.

The respondent commission's actions following a public hearing in which the petitioners had participated violated the petitioners' due process rights to a fair hearing procedure.

The respondent Norwalk Planning and Zoning Commission violated the most fundamental principles of procedural due process by applying retrospectively substantive regulations which it enacted after the petitioners participated in a public hearing on the basis of regulations then in effect.

> "Retrospective laws generally if not universally work injustice. Statutes should be construed retrospectively only when the mandate of the legislature is imperative." *Michaud* v. *Fitzryk*, 148 Conn. 447, 449, 171 A.2d 397 (1961) *Greene* v. *United States*, 376 U.S. 149 (1964); *Union Pacific R. Co.* v. *Laramie Stock Yards Co.*, 231 U.S. 190 (1913). This principle of legislative construction applies "with equal force to amendatory acts which effectuate changes in existing statutes..." *American Masons Supply Company* v. *F. W. Brown Company, et al.*, 174 Conn. 219, 223, 384 A.2d 378 (1978).

The prohibition against retrospective application of new or amendatory statutes applies to zoning law as well. *Castle* v. *McLaughlin,* 270 F.2d 448 (D.C. Cir. 1959); *Demarest* v. *Zoning Commission,* 134 Conn. 573, 59 A.2d 293 (1948); *MacKenzie* v. *Town Planning and Zoning Commission,* 149 Conn. 678, 683,

183 A.2d 619 (1962) (affirming this principle for zoning cases but carving out a special exception for amendatory zoning liquor regulations).

The Commissions' actions subsequent to the public hearing assaulted the basic requirements of a fair hearing, including proper notice of the proposed action, the opportunity to be heard at a meaningful time and in a meaningful manner, the opportunity to know the facts on which the Commission will take action, the fair opportunity to present relevant evidence, to cross-examine witnesses, to inspect documents presented, and to offer evidence in explanation and rebuttal. These protections are all elements of procedural due process under Article 1 § 10 of the Connecticut Constitution and the Fifth and Fourteenth Amendments to the U.S. Constitution. *Gonzales* v. *United States,* 348 U.S. 407 (1955); *Armstrong* v. *Manzo,* 380 U.S. 545 (1965); *Goldberg* v. *Kelly,* 397 U.S. 254 (1970); *Wadell* v. *Board of Zoning Appeals,* 136 Conn. 1, 68 A.2d 152 (1949); *Pizzola* v. *Planning and Zoning Commission,* 167 Conn. 202, 355 A.2d 21 (1974); *Roundhouse Construction Corporation* v. *Telesco Masons Supplies Co.,* 168 Conn. 371, 362 A.2d 778 (1975).

The January hearing did not afford petitioners the opportunity at a meaningful time and in a meaningful manner to oppose the Corporation's application as measured against the subsequently enacted R-D regulations. How could the petitioners possibly have prepared for a hearing in which the zone change application would be measured by substantive rules that were *not* then in existence? Retrospective application of the new zoning regulations in this case denied the petitioners the right "to prepare intelligently for the hearing" and the right to "the effective opportunity to be heard." *Jarvis Acres, Inc.* v. *Zoning Commission,* 163 Conn. 41, 47, 301 A.2d 244 (1972); *Roundhouse Construction Corporation* v. *Telesco Masons Supplies Co., supra,* at p. 377; *Morgan* v. *United States,* 304 U.S. 1 (1938); *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950); *Cole* v. *Arkansas,* 333 U.S. 196 (1948).

Not only did the retrospective application of the new regulations render the Commission's statutory notice of hearing invalid, it frustrated the whole purpose of the public hearing on January 12-13, 1977:

> The purpose of the requirement of a public hearing is obvious. The alteration of zonal boundaries may seriously affect the property rights of those owning land within or near the area involved. Hearings play an essential role in the scheme of zoning and in its development. 1 Yokley, Zoning Law & Practice (2d Ed.) p. 267. They furnish a method of showing to the commission the real effect of the proposed change upon the social and economic life of the community. Id., p. 268. Hearings likewise provide the necessary forum for those whose properties will be affected by a chance to register their approval or disapproval and to state the reasons therefor. *Couch* v. *Zoning Commission,* 141 Conn. 349, 357, 106 A.2d 173 (1954).

The petitioners never had the chance at the January hearing to register their disapproval of the application under the subsequently enacted regulations nor to state their reasons therefor.

At a zoning hearing "no one may be deprived of the right to produce relevant evidence..." *Welch* v. *Zoning Board of Appeals,* 158 Conn. 208, 212, 257 A.2d 795 (1969); *Parsons* v. *Board of Zoning Appeals,* 140 Conn. 290, 293, 99 A.2d 149 (1953); *Wadell* v. *Board of Zoning Appeals,* 136 Conn. 1, 9, 68 A.2d 152 (1949); *Bowman Transp. Inc.* v. *Arkansas Best Freight System, Inc.,* 419 U.S. 281 (1974), reh. den. 420 U.S. 956 (1974); *Withrow* v. *Larkin,* 421 U.S. 35 (1975).

By changing the zoning regulations after the public hearing of January 12 and 13, 1977, the respondent Commission rendered virtually irrelevant much of the testimony offered by the opponents, their experts, and the plaintiffs' legal counsel pertaining to zone capacities and "the real effect of the proposed change upon the social and economic life of the community" in viola-

tion of the fair hearing rule of the *Couch, Welch, Parsons* and *Wadell* cases.

> The conduct of the hearing shall not violate the fundamentals of natural justice. That is, there must be due notice of the hearing, and at the hearing no one may be deprived of the right to produce relevant evidence or to cross-examine witnesses produced by his adversary or to be fairly apprised of the facts upon which the board is asked to act. *Wadell* v. *Board of Zoning Appeals, supra,* at pp. 292, 293.

When the Commission repealed the old Research and Development regulations on April 6, 1977, and adopted new ones on the same date with certain zone capacity safeguards and provision for a site plan hearing, it made *ipso facto* much of the opponents' relevant testimony irrelevant. Conversely, the change of zone regulations providing site plan hearings and employee density restrictions gave expanded relevance and importance to the applicant's presentation based exclusively upon a site plan of a corporate world headquarters for 225-350 people. Under the existing R-D regulations the public would not have been entitled to a site plan hearing, so the testimony pro and con had to be directed toward the impact of all the allowable uses and scope of uses under the zone.

Similarly, retrospective application of the new R-D regulations prevented plaintiffs' counsel from effectively cross-examining the corporation's experts since counsel assumed he was cross-examining in the context of one set of regulations when the answers in fact were being judged by a different set of regulations not then in existence! Many of the admissions upon cross-examination which were meaningful under the existing regulations (e.g., admissions that the corporate experts had not studied the impact of other allowable uses under R-D at Rock Ledge or the same use in larger scale) lost their significance under the new regulations. Retroactive application of the new zoning regulations thus deprived the plaintiffs of their fundamental right of meaningful cross-examination at the public hearing. *Application of Gault,* 387 U.S. 85 (1967); *Goldberg* v. *Kelly, supra; In Fordiani's Petition,* 99 Conn. 551, 561, 121 At. 796 (1923); *Wadell* v. *Board of Zoning Appeals, supra,* at p. 9.

> The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps. *Morgan* v. *U.S.,* 304 U.S. 1, 20 (Hughes, C.J.).

It would be fallacious to reason that the change in zoning regulations evidences that the opponents had the "effective opportunity to be heard." If the opponents were persuasive regarding the failures of the zoning regulations, the Commission should have denied the application, and then after public hearing, perhaps amend the regulations. The defendant corporation could then have filed a new application under the amended regulations and the public could have been heard with respect to that application.

The Connecticut Superior Court erred in determining that the Commission's actions did not violate the petitioners' rights to a fair hearing.

II

The respondent commission violated the public's right to be heard at the zone change hearing by a commission ruling that only those members of the public who signed an opponents' speakers list in advance of hearing the corporate application would be permitted to speak in opposition after the corporate presentation.

The respondent Planning and Zoning Commission violated the First, Fifth, and Fourteenth Amendments to the United States Constitution assuring Due Process of Law and Freedom of Speech by imposing an *ad hoc* rule that only persons who signed a speakers list in advance of hearing what respondent Rock Ledge Corporation had to present would be permitted to

speak in opposition after its presentation.

> "'Parties whose rights are to be affected are entitled to be heard'.... It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo, supra,* at 552; *Roundhouse Construction Corporation* v. *Telesco Masons Supplies Co., supra,* at p. 277.

The public did not have the opportunity to be heard at "a meaningful time" because they were required to declare their opposition before they heard the Corporation's presentation, or forever be barred from speaking:

> "Mr. Canevari [Commission Chairman]... Right now I will go over the order of how I will handle this meeting tonight. The first person to be allowed to speak will be the applicant and/or his representatives. After the applicant the proponents will be allowed to speak, those of which have signed the roster we have in front of us. After the proponents, the opposition will be allowed to speak and they will be allowed in the order on the list we have...." (Transcript p. 2)

Connecticut General Statutes §8-3 provides for the effective opportunity at a zoning hearing for a citizen to be heard without restriction. On January 13, 1977, however, petitioner Betsy Palmer (who lives within 500 feet of the site) sought permission to speak in opposition to the corporate application. The Commission chairman denied her this opportunity because she had not signed up on the opponents' speaking list in advance of the public hearing. Miss Palmer testified at the Superior Court hearing regarding the restrictive effect of the sign-up sheet procedure:

Q. Excuse me, did you have occasion to make a request of the Planning and Zoning Commission to allow you to speak that evening?

A. Yes, I did. Yes, I did.

Q. Okay. And what was the response that you received when you asked to speak?

A. They said that they had enough names on the list and were not accepting any more.

Q. Had you signed up on that list?

A. No.

In essence, then, the sign-up sheet procedure robbed the public of the opportunity *first* to listen to the corporation, *and then* to determine (based upon what they heard) whether or not they wished to respond. Instead, the Commission limited the right to speak and rebut at the public hearing only to those who had made up their minds to speak prior to hearing the corporate presentation.

This sign-up procedure constituted an arbitrary rather than a reasonable restriction on the time and manner protections which insure freedom of expression. *Terminiello* v. *Chicago,* 337 U.S. 1 (1949); *Gregory* v. *City of Chicago,* 394 U.S. 111 (1969).

Even if Miss Palmer's testimony would have been similar to some of her neighbors, she had the right to express herself orally and to address the Commission without prior restraint. *Nebraska Press Association* v. *Stuart,* 427 U.S. 539 (1976). In fact, the sincerity and effective delivery of this well-known actress may well have been persuasive to the Commission, but the impact of her live testimony on the local Commissioners will never be known without a new hearing.

Miss Palmer's aborted attempt to speak at the public hearing demonstrated that only those who, *prior* to the hearing, *had planned* to respond to the corporate presentation would then be given the opportunity to rebut the corporate evidence.

The Superior Court below thus erred by holding that the speakers list did not deny petitioner Betsy Palmer and the public generally their right to present relevant evidence at the hearing and to be heard at a meaningful time and in a meaningful manner.

III

The Connecticut Supreme Court prejudiced the petitioners' due process rights to appellate review by failing to provide reasons for its Denial of Certification of the petitioners' appeal.

The Connecticut Supreme Court denied the petitioners' Petition for Certification of their appeal from the decision of the Connecticut Superior Court without informing the litigants of its reasons for not certifying the appeal.

In their Petition for Certification and their Motion for Reconsideration, the petitioners raised and briefed the issues which they have presented in this Petition for Writ of Certiorari. Despite the fact that the Superior Court's resolution of these constitutional issues conflicted with prior holdings of the Connecticut and United States Supreme Courts; and despite the importance of the case to the governmental agencies that look to the Connecticut Supreme Court for judicial interpretation of the requirements of procedural due process; and despite the importance of the case to the residents of Rowayton, Connecticut who, by majority vote, emphatically opposed the entry of a corporate giant in the midst of their quaint seaside village, and despite the special treatment which the respondent Norwalk Planning and Zoning Commission had given the corporation (see petitioners' appeal complaint at Appendix B), the Connecticut Supreme Court merely denied Certification without opinion.

Under the Connecticut Rules of Court, Denial of Certification by the Connecticut Supreme Court does not mean that the issues lacked merit. The Petitioners (and all other unsuccessful petitioners whose Petitions for Certification may be denied

without opinion by the Connecticut Supreme Court) thus cannot know whether they simply were the victims of "docket control," whether the Connecticut Supreme Court has narrowed its view of procedural process without articulating this erosion of such fundamental rights, or whether the petitioners have misinterpreted the seminal decisions of the Connecticut and United States Supreme Courts.

The Connecticut Supreme Court's failure to cite reasons for its Denial of Certification prejudices the petitioners' statutory right of appellate review (by Writ of Certiorari) by the United States Supreme Court. Since the petitioners are not able to cite to this Court which United States Supreme Court decisions that the state high court failed to consider or to apply correctly (if any), the petitioners cannot properly focus their appeal to the Court of last resort. As a corollary defect in this procedure, the United States Supreme Court does not have the benefit of the legal reasoning and research of the Connecticut Justices as it determines whether the Connecticut Supreme Court should have granted Certification and reversed the holding of the lower court.

Where the litigant has a statutory right to pursue appellate remedies, the Due Process requirements of the Fifth and Fourteenth Amendments must protect the litigant against incursions upon that right. See *Panama Refining Co.* v. *Ryan,* 293 U.S. 388, 432 (1935); *Boddie* v. *Connecticut,* 401 U.S. 371 (1971). Apparently for reasons of administrative convenience, the Connecticut Supreme Court has failed to cite any reasons for its Denial of Certification. The Connecticut Court's silence has prejudiced your petitioners' statutory right to petition that Court for Certification of their appeal and now prejudices their right to petition the United States Supreme Court for Certiorari.

CONCLUSION

For the reasons set forth above, this Court should grant certiorari to review the judgments below.

Respectfully submitted,

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March 12, 1979

APPENDIX A

[Statutes and Regulations]

(1)

CONNECTICUT CONSTITUTION

ARTICLE 1

§ 10. Right of redress for injuries

Sec. 10. All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

(2)

CONNECTICUT GENERAL STATUTES

§ 8-3. Enforcement of regulations; public hearings; changes

...No such regulation or boundary shall become effective or be established until after a public hearing in relation thereto, held by a majority of the members of the zoning commission or a committee thereof appointed for that purpose consisting of at least five members, at which parties in interest and citizens shall have an opportunity to be heard....

(3)

APPLICABLE ZONING REGULATIONS IN EFFECT AT TIME OF PUBLIC HEARING

§ 118-42. Definitions.

A. RESEARCH AND DEVELOPMENT ZONE or R-D Zone **[Amended 11-28-73, effective 12-5-73]** — Shall mean any area established from time to time by the Planning and Zoning Commission, City of Norwalk, and intended for any of the following uses:

(1) Any industry engaged in the development of products, research, design, experimentation, together with processing and fabrication incidental thereto, or office buildings providing professional, personal or commercial services, the operation of which are normally such that at no time will such use result in a nuisance due to the dissemination outside of the district of dust, smoke, fumes, odor, noise, vibration, pollution of streams in any degree whatsoever or hazardous from fire, explosive or other physical hazard to surrounding buildings or plant growth. Building or uses permitted in such area shall be constructed in accordance with a site plan reviewed and approved by the Planning and Zoning Commission, City of Norwalk, and subject to the conditions recited herein.

B. Prohibited uses.

(1) All uses prohibited in a Heavy or Light Industrial Zone.

(2) Residential use.

(3) Business use, except such use as is permitted in a Restricted Business (B-R) Zone.

C. REVIEW AND APPROVAL **[Amended 11-28-73, effective 12-5-73]** — Shall mean that the Planning and Zoning Commission shall review the site plans submitted and approve with particular reference to the following:

(1) Use intended fully complying with §§ 118-42A and 118-42B of these regulations.

(2) Design of facilities.

(3) Traffic access.

(4) Circulation of traffic for parking.

(5) Disposition of open space, particularly where adjacent to residential zones.

§ 118-43. Regulations.

A. Minimum lot area—six (6) acres.

B. Maximum area to be occupied by building or structure: initial occupancy—twenty percent (20%). May be extended after three (3) years to maximum of twenty-five percent (25%).

C. Bulk.

(1) Maximum height: thirty-five (35) feet above grade, except water towers and penthouses which shall be designed and located as approved by the Planning and Zoning Commision with reasonable consideration to the neighboring areas. **[Amended 11-28-73, effective 12-5-73]**

(2) Maximum number of stories: two (2), excluding basement.

D. Sanitary facilities. Surface drainage shall comply with the existing local regulations. Public sewer or private

disposal facilities may be utilized. Private disposal facilities shall conform to the requirements of the local health officers.

E. Parking facilities. Parking areas must be paved in accordance with standards of §§ 118-18 through 118-25, inclusive, of the Zoning Regulations, as applicable, and as now in effect and as hereinafter modified and amended.

F. Setbacks.

(1) Front yard. Minimum setback: eighty (80) feet from the front property line. The front yard shall be landscaped and not used for parking but may be used for driveways. However, a well-designed area for temporary off-street parking, thirty by one hundred fifty (30 x 150) feet, may be provided at the entrance for visiting vehicles.

(2) Side and rear yards. Minimum setback: eighty (80) feet from the respective property lines.

G. No main building shall be constructed nearer to any other main building than twenty (20) feet.

H. Signs. Company name signs not over two (2) feet in height and of the required length may be erected on the front wall of the building and must be approved by the Commission. No sign shall be erected on the roof of any building. Direction, safety or advertising signs not exceeding four (4) feet square may be erected as required. Billboards and flashing signs are prohibited. **[Amended 11-28-73, effective 12-5-73]**

I. Storage of materials. Materials must be stored in completely enclosed and properly constructed buildings. Waste materials must be stored and periodically removed as directed by the local Fire Marshal and the

Department of Health, and such storage areas must be screened from adjoining properties.

J. Procedure.

(1) Before an application is made to the Building Inspector or a site plan filed, the Zoning Insepctor must certify that the property is located in an R-D Zone. **[Amended 9-3-75, effective 9-15-75]**

(2) Application to the Zoning Inspector shall be accompanied by a site plan, distances to nearest streets and zone boundaries, specifications and drawings for buildings, drainage, sewers, water, fire protection, landscaping, signs, screening, use of premises, walkways, driveways, ingress and egress and conformity to traffic conditions of the surrounding streets. **[Amended 9-3-75, effective 9-15-75]**

(3) The application shall be transmitted to the Commission by the Zoning Inspector for review and approval **[Amended 11-28-73, effective 12-5-73; 9-3-75, effective 9-15-75]**

(4) The Commission shall review the said plan and render its decision within sixty (60) days of the date the application was transmitted to it by the Zoning Inspector **[Amended 11-28-73, effective 12-5-73; 9-3-75, effective 9-15-75]**

(5) The Building Inspector shall issue a building permit only after receipt of the Commission's approval and upon full compliance with the Building Code of the City of Norwalk. **[Amended 11-28-73, effective 12-5-73; 9-3-75, effective 9-15-75]**

(6) A certificate of occupancy shall be issued by the

Building Inspector only after approval of construction under the Building Code[1] of the City of Norwalk and these regulations.

K. Any site plan approved hereunder may be subsequently altered only in accordance with the same procedure and requirements specified herein for initial approval.

(4)

APPLICABLE ZONING REGULATIONS ENACTED AFTER PUBLIC HEARING

ARTICLE II

Research and Development Zone
[Added effective 5-20-57; amended 11-28-73, effective 12-5-73; 9-3-75, effective 9-15-75; 4-6-77, effective 4-14-77]

§ 118-41. Research and Development (R-D) Zone regulations.

A. Purpose and intent.

(1) It is declared that a need has developed in Norwalk for the provisions of a Research and Development Zone, to be known as an R-D Zone, which cannot be provided within the scope of the present Building Zone Regulations.

(2) It is the purpose of this zone to permit a limited number of executive offices and research and development firms which will contribute to the economic base of the city and will constitute a harmonious and appropriate part of the physical development of the city. The provisions of this zone are intended to ensure that all permitted uses and structures will be compatible with and will

provide protection to adjacent residential areas and will maintain the character of the neighborhood in which they are located.

B. Uses and structures.

(1) Principal uses and structures. Premises and buildings shall be used only pursuant to Special Permit, as defined in Subsection B(2); except that if the zoning district existing prior to the amendment of the Zoning Map establishing this zone was a residence zone, the use of premises and buildings shall be permitted in accordance with the requirements of such prior district.

(2) Special Permit uses and structures. The following uses and structures and no others shall be permitted by Special Permit, in accordance with the provisions of Article V, § 118-73, Special Permits, and subject to the additional standards set forth herein:

(a) Office buildings for business and professional establishments, other than those primarily providing services to customers or clients on the premises.

(b) Research and development facilities which involve no production or fabrication of products for sale. Notwithstanding the foregoing, the manufacture of limited quantities of products solely for research purposes may be permitted as specifically authorized by the Commission.

(3) Additional standards for Special Permit uses.

(a) The uses permitted by Special Permit in the R-D Zone shall be subject to the following ad-

ditional standards:

[1] Environmental impact. No use shall be allowed which would have an adverse effect upon adjacent properties by reason of the emission of smoke, particulate matter, noise, dust, glare, fumes, odor, ionizing radiation, vibration, heat or any other noxious pollutant or waste.

[2] Storage of materials. All materials stored on the premises shall be in completely enclosed structures.

[3] Sanitary facilities. Public sewer facilities shall be utilized and adequate provision for storm drainage shall be made, as determined by the Commission.

[4] Location and access. Each parcel shall have direct access on an arterial or collector street, designated upon the Urban Systems Map, as amended, capable of providing safe and adequate access to the site.

[5] Employee density. The maximum number of employees permitted on each lot shall not exceed twenty-five (25) per acre or fraction thereof.

[6] Hours of operation. Hours of operation shall be limited to between 7:00 a.m. and 7:00 p.m., except for maintenance purposes, data and communications processing, and research and equipment requiring continuous operation or study.

[7] Illumination. Exterior illumination shall be controlled by design or screening so as

not to intrude upon adjacent streets and properties.

[8] Existing buildings and structures. Buildings of historical or architectural significance which exist on the site shall be preserved and adapted for reuse in a manner which maintains the character of the building.

[9] Landscaping. All areas of a site not used for building, parking, walks and drives shall be suitably landscaped. New construction shall be designed and carried out in a manner which results in the least defacement to the existing landscape features of the site.

(b) Application for Special Permit shall include plans, drawings and other documentation which the Commission deems necessary for it to evaluate the standards for Special Permit listed under § 118-73C, and the additional standards set forth herein. The Commission may refer such applications to appropriate city agencies and departments for review and recommendations.

(4) Accessory uses and structures. Accessory uses and structures which are incidental to and customarily associated with the principal use of the premises shall be permitted, subject to the setback requirements for the principal use and subject to the following restrictions:

(a) Lodging shall be for the temporary accommodation of not more than ten (10) employees or visitors.

(b) Recreation facilities shall be for the exclusive use of employees and guests.

(c) Living quarters may be provided solely for a custodian, caretaker or watchman and family.

C. Lot and building requirements. See Schedule of Commercial and Industrial uses and all other applicable sections of these regulations.

D. Off-street parking and loading requirements. See §§ 118-18 through 118-24 and, in addition:

(1) Off-street parking and loading facilities shall be located in accordance with the required building setback lines.

(2) Off-street parking and loading facilities shall be effectively screened from view from adjacent streets and properties.

E. Sign regulations. The following nonilluminated signs and no others shall be permitted on each lot:

(1) One (1) sign per public entrance, which sign identifies the name of the company or companies which occupy the premises, provided that such sign does not exceed twelve (12) square feet in area and six (6) feet in height.

(2) Directional signs which identify entrances and exits, parking areas traffic flow or hazards, provided that such signs are of a strictly informative nature and do not exceed two (2) square feet in area and four (4) feet in height.

APPENDIX B

[Judgment and Proceedings Below]

Issues Raised in Timely and Proper Fashion

(1)

Thomas W. Cohn, et. al.
vs.
Norwalk Planning and Zoning Commission, et. al.

Superior Court
Fairfield County of Stamford
April 19, 1977

COMPLAINT

13. The defendant Commission acted illegally, arbitrarily and in abuse of the discretion vested in it by using improper procedures to reach its decision to grant said application under amended Research and Development Regulations, in that:

(a) The Commission failed to give the plaintiffs, in particular, and the public, in general, notice and the opportunity for a hearing after it amended the Research and Development Regulations and before it applied said amended regulations to said application in violation of Section 8-3 of the Connecticut General Statutes, and Article I, Section 8, of the Connecticut Constitution and the Fifth and Fourteenth Amendments to the United States Constitution providing for procedural due process.

(b) The action of the Commission on April 6, 1977, by which it voted to amend the Research and Development Regulations in substantial part, made relevant

certain evidence of the applicant which theretofore was irrelevant and made irrelevant a great amount of the opponents' evidence which theretofore was relevant so as to deprive the plaintiffs and the general public of a hearing on January 12 and 13, 1977, in violation of Section 8-3 of the Connecticut General Statutes, and Article I, Section 8, of the Connecticut Constitution and the Fifth and Fourteenth Amendments to the United States Constitution.

(c) Certain persons who wished to speak in opposition to said application at the hearings on January 12 and 13, 1977, were deprived of their right to do so by virtue of an *ad hoc* rule of the Commission's Chairman that only persons who signed up in advance of hearing what Rock Ledge Corporation had to present would be permitted to speak in opposition after its presentation, in violation of Section 8-3 of the Connecticut General Statutes, and Article I, Section 8 of the Connecticut Constitution and the Fifth and Fourteenth Amendments to the United States Constitution providing for procedural due process and Article I, Sections 4 and 5, of the Connecticut Constitution and The First Amendment to the United States Constitution providing for Freedom of Speech.

(d) Certain members of the Commission who voted to grant said application were not present for all or part of the hearings on January 12 and 13, 1977.

(e) The defendant Commission had already voided the defendant Rock Ledge Corporation's application before it voted on the same by rescinding in substantial part the regulations under which it was filed.

(f) No application for change of zone was filed by defendant Rock Ledge Corporation under the amended zoning regulations, so that the Commission had no application on which to take action under the amended regulations.

(g) The zoning committee of the defendant Planning and Zoning Commission consists of seven of the ten members of the defendant Commission; on March 24, 1977, and April 5, 1977, said seven member committee met to discuss the merits of changing the zoning regulations, the merits of the application of defendant Rock Ledge Corporation, and other issues prejudicial to the plaintiffs, without filing a notice of such meetings at the office of the City Clerk so as to inform the public of same in violation of Section 1-21 of the Connecticut General Statutes known as The Freedom of Information Act.

(h) The defendant Commission granted the application under amended regulations which were intended and worded to accommodate the special interests of Rock Ledge Corporation and not for future applicants for other areas in Norwalk.

(2)

NO. 19151 L

THOMAS W. COHN, ET AL	:	SUPERIOR COURT
VS.	:	
CITY OF NORWALK PLANNING COMMISSION, ET AL	:	
NO. 19849 L		JUDICIAL DISTRICT OF FAIRFIELD
THOMAS W. COHN, ET AL	:	
VS.	:	
CITY OF NORWALK PLANNING AND ZONING	:	
COMMISSION, ET AL	:	AT STAMFORD

NO. 20023 L

THOMAS W. COHN, ET AL
VS.
STATE TRAFFIC COMMISSION, ET AL

NOVEMBER 14, 1978

MEMORANDUM OF DECISION

All of the above-entitled cases were tried together, and are appeals by plaintiffs from the granting of a change of zone by the defendant, Norwalk Planning & Zoning Commission of the City of Norwalk (hereinafter called Case Number 1), the granting by defendant, Planning & Zoning Commission, of a special permit to Rockledge Corporation to construct an executive headquarters on the site which was the subject of the zone change (hereinafter called Case Number 2) and the granting of a Major Generator Certificate by the Defendant, State Traffic Commission to the defendant, Rock Ledge Corporation (hereinafter called Case Number 3). Most of plaintiffs in all three cases are the same individuals and all reside in a section of Norwalk called Rowayton. Three of the plaintiffs in Cases 1 and 2 are not plaintiffs in Case 3, and two plaintiffs are in Case 3 who are not in Cases 1 and 2.

The cases were not tried on consecutive days at the request of plaintiffs since some of their witnesses were not available on the scheduled trial days. The parties agreed that testimony as to aggrievement, where appropriate, would be equally applicable to all three cases. The factual basis of all the cases is sufficiently similar to permit a disposition applicable to all, in one decision. *Sheridan et al v. Planning Board of Stamford,* 159 Conn. 1 (1969). . . .[The petitioners have deleted by ellipses portions of the opinion which are not related to the issues raised in this Petition for Certiorari.]

On June 30, 1975, defendant, Rock Ledge, purchased approximately 15 acres of land which are the subject of these

appeals. On December 1, 1976, the defendant corporation made application to the defendant Commission for a change of zone from AA Residence to Research & Development Zone. On January 12th and 13th 1977, the Commission held public hearings on such zone change. Voluminous testimony and documents characterized the hearing. At least seven affirmative votes of the Commission members were needed to change the zone, which votes on April 6, 1977 were forthcoming, leading to a change in zone. On the same date, the defendant corporation's application was approved. The affirmative votes numbered 8. Plaintiffs claim that the Commission acted illegally, arbitrarily, and in abuse of its discretion.

The solution of zoning questions has traditionally been left to local zoning authorities which have a wide and liberal discretion, which discretion should not be disturbed if they have acted fairly, with proper motives, and for valid reasons. *The Conn. Law of Zoning,* Conn. Bar Journal, September 1967, pg. 496. Where the zoning entity has stated its reasons, and those reasons or any one of them are reasonably supported by the record, the appeal of a plaintiff must fail. *The Connecticut Law of Zoning,* supra, at pg. 497. The power to change a zone should be tested by the benefit to the "community" as a whole, the word "community" being interchangeable with the word "municipality." See *Norwicki v. Planning & Zoning Board of Town of Milford,* supra.

Plaintiffs claim that the Commission should not have granted defendant-corporation's application for a zone change because new zoning regulations relative to Research and Development zones were not in force when the application was filed. At the hearing on the zone change, the particular application of the defendant-corporation was considered, with proper notice given. The plaintiffs were apprised of the nature of the hearing and able to intelligently prepare for, and participate in the hearing. The new regulations as adopted in April, 1977 were more stringent than the ones existing at the time defendant filed its

application. Regulations for Research & Development Zones existed as of the date of defendant's application and plaintiffs had ample opportunity to contest that application in the context of the more liberal (as applied to defendant-corporation) regulations. There was no need for a subsequent hearing where the plaintiffs were not prejudiced. Any attack on the regulations in effect at the time of the January hearings would include an attack on the stricter regulations as eventually enacted. The new regulations as adopted were but a tightening of the old, and cases such as *Demarest v. Zoning Commission,* 134 Conn. 572 (1948) are not applicable, in this Court's opinion. An amendment of zoning regulations differing in incidental detail but not in fundamental character from the one proposed by an applicant for a zone change and for which notice was given is not sufficient to overturn the Commission's action, since the notice is not intended to be an exact forecast of the precise action which the zoning authority may take. *Neuger v. Zoning Board of Stamford,* 145 Conn. 625 (1958)....

Plaintiffs complain that the public hearing failed to accord them due process since the defendant-Commission imposed procedures for the hearing which allowed only those who had signed a speaker's list in advance to be heard. In effecting zone changes, the Commission acts in a legislative capacity. *The Connecticut Law of Zoning,* 41 Conn. Bar Journal, pg. 453; *Loh v. Town Plan & Zoning Commission,* 161 Conn. 32 (1971), and as such is not bound by procedural rules governing judicial and quasi-judicial hearings. See *Wadell v. Board of Zoning Appeals,* 136 Conn. 1 (1949). The procedure followed at the hearing in the instant case was to allow the applicant to be heard, then the proponents who signed a roster, then the opponents of the zone change, and then rebuttal of the applicant. In view of the large numbers of persons attending the hearing, and the admittedly lengthy hearing which spanned two nights, procedure for a manageable and orderly hearing had to be established. It was not unreasonable to require those wishing to

speak, to indicate that fact in advance. Only one of the plaintiffs testified that she was denied an opportunity to speak, not having signed the roster, although she also testified that she would have said the same things stated in her letter mailed to the Commission prior to the hearing or the same things as expressed by some of the other plaintiffs. The Commission did not err in its conduct of the meeting with reference to the requirement of signing-up to speak in advance of the presentation of defendant-corporation's cause....

The appeals of plaintiffs are dismissed as to the three cases which are the subject of this Memorandum.

Dupont, J. /s/

(3)

THOMAS W. COHN ET. AL.	:	
VS.	:	SUPERIOR COURT
NORWALK PLANNING	:	FAIRFIELD COUNTY
AND ZONING COMMIS-	:	AT STAMFORD
SION, ET. AL.	:	NOVEMBER 28, 1978

PETITION FOR CERTIFICATION

ISSUES PRESENTED

ISSUE 1.

THE COURT ERRED IN HOLDING THAT THE DEFENDANT COMMISSION, AFTER THE PUBLIC HEARING ON THE CHANGE OF ZONE, COULD APPLY NEW SUBSTANTIVE ZONING REGULATIONS RETROSPECTIVELY TO THE PENDING ZONE CHANGE APPLICATION ABSENT CLEAR LEGISLATIVE EXPRESSION TO DO SO IN THE REGULATIONS

ISSUE 2.

THE COURT ERRED IN HOLDING THAT DEFENDANT COMMISSION'S PROCEDURES DID NOT VIOLATE THE PLAINTIFF'S STATUTORY AND CONSTITUTIONAL RIGHTS TO A "FAIR HEARING"

ISSUE 3.

THE COURT ERRED IN HOLDING THAT THE COMMISSION DID NOT INFRINGE UNLAWFULLY UPON RIGHT OF PLAINTIFF BETSY PALMER TO BE HEARD AND TO PRESENT RELEVANT EVIDENCE AT THE PUBLIC HEARING WHEN THE COMMISSION DENIED HER REQUEST TO SPEAK BECAUSE SHE HAD NOT SIGNED A SPEAKERS LIST TO DECLARE HER OPPOSITION TO THE ZONE CHANGE APPLICATION BEFORE SHE HEARD THE CORPORATION'S PRESENTATION

(4)

DENIAL OF CERTIFICATION
TO CONNECTICUT SUPREME COURT

No. 0191S1 5

Thomas W. Cohn et. al. v. Planning and Zoning Commission of the City of Norwalk et. al., December 20, 1978. The plaintiffs' petition for certification for appeal from the Superior Court in the judicial district of Fairfield at Stamford is denied by the court.

/s/_____
Reporter of Judicial decision

(5)

THOMAS W. COHN, et al.,	:	SUPERIOR COURT
vs.	:	FAIRFIELD COUNTY
PLANNING AND ZONING COMMISSION, CITY OF NORWALK, et al.	:	AT STAMFORD DECEMBER 29, 1978

MOTION FOR RECONSIDERATION

The plaintiffs in the above-captioned action respectfully represent as follows:

1. On December 20, 1978 this Court denied the plaintiffs' Petition for Certification By Supreme Court. A copy of said Denial was mailed to all counsel on December 26, 1978 by the Reporter of Judicial Decisions.

2. The plaintiffs' Petition alleges that the Superior Court erred in upholding a decision of the Norwalk Planning and Zoning Commission which changed the zone of the Rock Ledge premises in Rowayton from AA Residential to Research and Development.

3. Said Petition alleges, *inter alia,* that the Superior Court's decision violated the plaintiffs' constitutional Due Process rights to a Fair Hearing by permitting said Commission, after the public hearing on the change of zone, to apply new substantive zoning regulations retrospectively to the pending zone change application, in violation of *American Masons Supply Company v. F. W. Brown Company, et al.,* 39 C.L.J. No. 32 (Feb. 7, 1978); Conn. Gen. Stat. §§ 1-1(u), 55-3; *Michaud v. Fitzryk,* 148 Conn. 447, 449; *Demarest v. Zoning Commission,* 134 Conn. 572; *MacKenzie Town Planning and Zoning Commission,* 149 Conn. 678, 683; *Couch v. Zoning Commission,* 141 Conn. 349, 357; *Wadell v. Board of Zoning Appeals,* 136 Conn.

1, 9; *Jarvis Acres, Inc. v. Zoning Commission,* 163 Conn. 41, 47.

4. Said Petition also alleges *inter alia* that the Superior Court erred in upholding the right of said Commission to deny plaintiff Betsy Palmer the opportunity to speak at the public hearing merely because she had not signed a speakers list to declare her opposition to the zone change application *before* she had heard the applicants' presentation in violation of her constitutional right to be heard and present evidence at the public hearing. *Roundhouse Construction Corporation v. Telesco Masons Supplies Co.,* 168 Conn. 371; *Parsons v. Board of Zoning Appeals,* 140 Conn. 290, 293; *Schwartz v. Town Planning & Zoning Commission,* 168 Conn. 285, 289.

5. The plaintiffs' Petition for Certification raised issues of great public importance not only because of the constitutional issues which were presented but also because it challenges on meritorious grounds the decision of the Planning and Zoning Commission which validated in the eyes of the public the repeated misrepresentations of Continental Group that it would not seek to establish its world headquarters in Rowayton in the face of opposition to such plans by a majority of residents in Rowayton.

6. This Court denied the Plaintiffs' Petition without setting forth any reasons. Since, under prior law, the plaintiffs would have had an absolute right to appeal, the limitation of that right by requiring a Petition for Certification must be strictly construed, and the Court owes the parties no less than a statement of the reasons for the Denial of Certification. As the Denial now stands, neither the parties nor the United States Supreme Court upon writ of certiorari can intelligently ascertain whether or not there was a basis in fact or law for this Court's determination. The Court should provide the plaintiffs with the grounds for

denial so that they can reasonably determine whether to seek certiorari in one, two, or all three of their appeals. Failure to provide the plaintiffs with a statement of reasons violates their right to meaningful appellate review by this Court and the United States Supreme Court. See *United States v. Nagler,* 484 F.2d 38 (2d Cir. 1973); *Panama Refining Co. v. Ryan,* 293 U.S. 388, 432 (1935); *Goldberg v. Kelly,* 397 U.S. 254 (1970); *Boddie v. Connecticut,* 401 U.S. 371 (1971).

WHEREFORE, the plaintiffs move that this Court reconsider its Denial of the plaintiffs' Petition for Certification and grant Certification of the plaintiffs' appeal; alternatively, if this Court will not grant certification, then the plaintiffs move that this Court provide the parties with reasons for its Denial.

THE PLAINTIFFS

WOFSEY, ROSEN, KWESKIN & KURIANSKY
Their Attorney

By _____

Edward M. Kweskin
Wofsey, Rosen, Kweskin & Kuriansky
777 Summer Street
Stamford, Connecticut 06901
Tel: 327-2300; Juris 68550

I hereby certify that a copy of the above was mailed to all counsel of record on December 29, 1978.

_____
Edward M. Kweskin

ORDER

The above Motion having been heard, it is hereby

_____ Granted _____ Denied.

BY THE COURT

_____
Clerk

(6)

DENIAL OF MOTION FOR RECONSIDERATION, CONNECTICUT SUPREME COURT

No. 019151 S

Thomas W. Cohn et. al. v. Planning and Zoning Commission of the City of Norwalk et. al., January 11, 1979. The plaintiffs' "Motion for Reconsideration" of the denial of their petition for certification is denied by the court.

/s/ _____
Reporter of Judicial Decisions

Supreme Court, U. S.
FILED
APR 16 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1439

THOMAS W. COHN, ET AL.,

Petitioners,

v.

CITY OF NORWALK PLANNING AND ZONING COMMISSION AND ROCK LEDGE CORPORATION

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

RESPONDENT ROCK LEDGE CORPORATION'S BRIEF IN OPPOSITION

HARRY H. HEFFERAN, JR.
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Attorneys for Respondent
Rock Ledge Corporation

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MISCELLANEOUS:

Rathkopf, Zoning and Planning (4th ed. 1975) 5, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1439

THOMAS W. COHN, ET AL.,

Petitioners,

v.

CITY OF NORWALK PLANNING AND ZONING COMMISSION AND ROCK LEDGE CORPORATION

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

RESPONDENT ROCK LEDGE CORPORATION'S BRIEF IN OPPOSITION

The Respondent, Rock Ledge Corporation, hereby opposes the Petitioners' prayer for a writ of certiorari filed on March 19, 1979, and respectfully requests that said petition be denied.

Opinion Below

The memorandum opinion of the Connecticut Superior Court for the Judicial District of Fairfield at Stamford is as yet unreported and is partially presented in Petitioners' Appendix B and partially in Appendix B hereto.

Jurisdiction

The petition for writ of certiorari erroneously claims that the jurisdiction of this Court is evoked under 28 U.S.C. Sec. 1254(1), which deals with petitions to Federal Courts of Appeals and not to State Courts. This petition involves a final determination by the highest Court of the State of Connecticut and not a Federal Court of Appeals. Jurisdiction should have been invoked pursuant to 28 U.S.C. Sec. 1257(3). For this reason alone, the petition should be dismissed.

Questions Presented

WHETHER PETITIONERS CAN BE HEARD TO COMPLAIN ABOUT ACTION TAKEN BY THE COMMISSION FAVORABLE TO THEM AND DETRIMENTAL TO THE APPLICANT-RESPONDENT?

WHETHER PROPONENTS AND OPPONENTS WHO WERE HEARD OVER TWO DAYS WERE PROVIDED WITH A FAIR HEARING?

WHETHER THE CONNECTICUT SUPREME COURT VIOLATED THE PETITIONERS RIGHTS TO DUE PROCESS BECAUSE IT DID NOT STATE REASONS FOR ITS DENIAL OF CERTIFICATION OF THE PETITIONERS' APPEAL?

Constitutional Provisions, Statutes and Regulations Involved

The judgments of the Courts below violated no rights of Petitioners under the United States Constitution or its amendments. Other statutes and rules are set forth in Appendix A hereto.

Statement of the Case

This case involves an appeal from a routine zone change application granted by the Respondent Norwalk Planning and Zoning Commission to the Respondent Rock Ledge Corporation by a small group of area residents who were unhappy with the Commission's decision. There are no substantial Federal questions raised by the Petitioners that would merit review by this Court. In essence, the Petitioners are attempting to have this Court review a local zoning case that was decided by the Court below on principles well settled in the State of Connecticut by alleging their constitutional rights were violated.

The property involved is a 15.48 acre tract located in Norwalk, Connecticut, and bounded on three and a half sides by highways. At the time the Respondent Rock Ledge Corporation's application for change of zone was filed, the property was zoned for Residential use. It had not been used for Residential purposes since 1944. Shortly after World War II, the premises were used as an executive office for a major corporation despite the Residential zoning. Between 1963 and 1975, the property was used by a private girl's school. When the school moved away, the property was purchased by the Respondent Rock Ledge Corporation with the express purpose of again using it for an executive office.

An application was filed on December 1, 1976, to change the

zoning from Residential to an R-D Zone which would permit executive office use, and a hearing was held on said application on the evenings of January 12 and 13, 1977. Most of the surrounding landowners and the only abutting landowner went on record in favor of the proposal. At the commencement of the hearing, the Chairman of the Respondent Norwalk Planning and Zoning Commission announced the procedure to be followed which was to allow the applicant to be heard first together with any supporters, the opponents would be heard second and any rebuttal to follow. The Chairman stated at the commencement of the meeting, "All citizens and taxpayers of Norwalk are welcome and allowed to speak . . . Also I would like you to know that we will not have a so-called show of hands or a voice vote tonight. We are interested only in the evidence to be presented by individuals." (Transcript, meeting of January 12, 1977, p. 2). The meeting started shortly after 8:00 p.m. and the proponents finished their formal presentation before 10:00 p.m. (Transcript, meeting of January 12, 1977, p. 25).

The Petitioners, most of whom appeared at the January 12 and 13 hearing, were then and now represented by the same counsel who made no objection to the procedure which included the requirement that anyone who wished to speak should sign a list that was available at the entrance to the auditorium. After the Respondent Rock Ledge Corporation and its supporters finished their presentation, the Petitioners commenced their presentation with the guidance of counsel. (Transcript, meeting of January 12, 1977, p. 44). The opponents' statements went on into the early hours of the morning and the Chairman adjourned the meeting to the following evening. The next evening the opponents continued their case which ran until midnight. The Respondents rebutted the opponents in approximately 10 minutes.

One of the main objections of the Petitioners at the two-night hearing was that the R-D Zone regulations were inadequate. Between the time of the public hearing on the zone change and the decision to change the zone, the Respondent Norwalk Planning and Zoning Commission adopted many of the recommendations of the Petitioners and stringently tightened the regulations which applied to the R-D Zone, all to the detriment of the Respondent Rock Ledge Corporation and others similarly situated. It did so only after holding a public hearing properly noticed on the proposed regulations at which the Petitioners and their counsel appeared and were fully heard.

After the regulations were so amended, the Respondent Norwalk Planning and Zoning Commission changed the zone of the Respondent Rock Ledge Corporation's property from Residential to R-D Zone. The Petitioners took an appeal from this action and from subsequent actions of the Planning and Zoning Commission and from the Connecticut State Traffic Commission which granted permits to the Rock Ledge Corporation to construct an office building. The Court below heard all cases together and issued a judgment in favor of the Respondents in all cases. The Petitioners then attempted to obtain certification to the Supreme Court of Connecticut in all cases which were denied. The Petitioners are pursuing this writ of certiorari in the zone change only.

Reasons For Denying The Writ

Certiorari should be denied in this case because there are no substantial Federal questions involved.

I.

Where the petitioners have had a full and fair hearing, they cannot be heard to complain that the zoning commission amended the zoning regulations in a manner favorable to the petitioners and to the detriment of the applicant-respondent.

The first question raised by the Petitioners for review by this Court is whether they were deprived of an adequate hearing with respect to the Respondent Rock Ledge Corporation's zone change application by reason of the amendment of the provisions governing development of an R-D Zone subsequent to the hearing on the application and prior to the effective date of the zone change. There is no question, and the Petitioners do not dispute the fact that all of the changes to the R-D Zone regulations were in direct response to their underlying complaints with respect to the zone change and that the amended regulations imposed substantial new restrictions upon the nature and scope of development of R-D zoned property. Nor is there any question that the regulation amendments were separately and properly noticed, that a full hearing was held with respect to them on March 16, 1977, and that a number of Petitioners and their attorney actively participated in the hearing, addressed the question again of the advisability of granting the zone change application in this hearing, and currently evidenced an understanding that the new, more stringent zoning regulations were to be applied to the Rock Ledge Corporation's property.

It is fundamental that a zoning commission has the legislative power to change its regulations at any time. *A. P. & W. Holding Corporation v. Planning and Zoning Board,* 167 Conn. 182, 184, 355 A.2d 91 (1974). The notice of hearing is not required to contain an accurate forecast of the precise action ultimately taken upon the subject matter referred to in the notice. 1 Rathkopf,

Zoning and Planning, Section 10.03 et seq. (4th ed. 1975); *Neuger v. Zoning Board,* 145 Conn. 625, 630, 145 A.2d 738, 742 (1958).

The Courts of this nation are replete with decisions that where the result differs insubstantially from the hearing notice or, and more pertinent to this case, where regulations are adopted or a result is obtained which differs from the proposal in a manner favorable to the opponents and detrimental to the applicant, opponents' later claims of unfair hearing will not be sustained. *Heaton v. City of Charlotte,* 277 N.C. 506, 178 S.E. 2d 352 (1971) (change favorable to the complaining parties); *Klaw v. Pau-Mar Construction Company,* 11 Terry 487, 50 Del. 487, 135 A.2d 123 (1957) (smaller areas rezoned for apartment from single-family use); *St. Bede's Episcopal Church v. City of Santa Fe,* 85 N.M. 109, 509 P.2d 876 (1973) (3.6 acres proposed to be rezoned from Residential to Commercial and after hearing 2.7 acres actually rezoned); *Kalvaitis v. Village of Port Chester,* 235 N.Y.S. 2d 44 (1962) (changes made by Commission increasing burden upon the owner as against the proposed notice); *McGee v. City of Cocoa,* 168 So. 2d 766 (Fla. App.) (1964) (lesser change of zone than that requested and published in the notice of hearing — plaintiffs in attendance).

The Court below was entirely correct in concluding that *Neuger v. Zoning Board,* 145 Conn. 625, 145 A.2d 738 (1958) wholly disposed of the plaintiffs' argument. In *Neuger,* plaintiffs, aggrieved property owners adjoining a shopping center, similarly contended that changes in a proposed zoning amendment regulating the location of package stores in shopping centers, which changes had been effected subsequent to the hearing on the amendment, were improperly enacted and should have been accorded a second public hearing prior to enactment. As in the

instant case, the amendments were largely responsive to the complaints raised by the plaintiffs in the public hearing. In rejecting plaintiffs' claim of deprivation of due process, the Court soundly reasoned that:

> The changes in the language of the amendment as a result of the views expressed at the hearing did not effect the sufficiency of the notice or the validity of the hearing. The very purpose of the hearing was to afford an opportunity to interested parties to make known their views and to enable the board to be guided by them. It is implicit in such a procedure that changes in the original proposal may ensue as a result of the views expressed at the hearing. *Couch v. Zoning Commission,* 141 Conn. 349, 358, 106 A.2d 173; *Pecora v. Zoning Commission,* 145 Conn. 435, 444, 144 A.2d 48 *Klaw v. Pau-Mar Construction Co.,* 50 Del. (11 Terry) 487, 135 A.2d 123.

145 Conn. at 630.

If anything, the instant case is even less appropriate than *Neuger* for a claim of deprivation of due process, since *no* change was made to the actual request for a zone change between notice and approval. All that was changed were regulations pertaining to the R-D Zone requirements, which amendment was separately noticed and accorded a hearing, in which Petitioners actively participated, with full awareness that the new regulations were to affect the Rock Ledge Corporation's property. The Petitioners' active participation in such hearing is not to be overlooked in considering the soundness of their claim for aggrievement. Cf. *MacKenzie v. Town Planning & Zoning Commission,* 149 Conn. 678, 684, 183 A.2d 619 (1962). The Petitioners' rights to a fair hearing were not violated.

II.

The public hearing was held in an orderly and fair manner and did not violate due process.

An opportunity for hearing is one of the essential elements of due process. *Shields v. Utah Idaho C.R. Co.,* 305 U.S. 177 (1938). If reasonable opportunity for hearing is afforded a person sought to be affected by a proceeding, then he has had due process. *Lynde v. Lynde,* 181 U.S. 183 (1901).

The public hearing was held on January 12 and 13, 1977, and afforded proponents and opponents their fair hearing and was not violative of due process. Many hours were devoted to oral presentations, and each side was allowed to fully develop the issues. During the trial, plaintiff Betsy Palmer testified at one point as follows:

> "Q. And did you ask the Chairman whether or not you could speak at that hearing?
>
> A. Actually what it was, I came to the meeting and Grace Lichtenstein, and I talked to her prior to the meeting and she came and met . . . ."
> (Transcript, p. 629).

The Court then sustained an objection as to what Grace Lichtenstein said on the ground of hearsay. Later plaintiff Betsy Palmer claimed that she made a request to the Commission to allow her to speak and, "they said that they had enough names on the list and were not accepting anymore." She stated that she had not signed the speakers list even though she was there the previous night. This confusing bit of testimony appears to be the

basis for the second issue raised by the Petitioners.

An examination of the entire record of the hearing before the Planning and Zoning Commission on January 12 and January 13, 1977, fails to disclose where anyone was denied the right to speak, particularly any plaintiff and most particularly Betsy Palmer. In fact, at page 37 of the transcript for the first night of the hearing we find the following statement by the Chairman of the Respondent Planning and Zoning Commission:

> "Mr. Canevari: If we get to the point where people really have to go home, we will come back tomorrow night, everyone has to have a chance. That is America, that is democracy and that is the way we work."
> (Transcript, meeting of January 12, 1977, p. 37).

As the Trial Court observed from the record before it, the procedure followed by the Commission in establishing proponents lists and opponents lists was a reasonable one under the circumstances in view of the large number of persons attending the hearings and wishing to be heard. The Commission was acting in a legislative capacity. *Loh v. Town Planning and Zoning Commission,* 161 Conn. 32, 282 A.2d 894 (1971). The Commission is not bound by procedural rules governing judicial and quasi-judicial hearings. *Wadell v. Board of Zoning Appeals,* 136 Conn. 1, 68 A.2d 152 (1949). As the Court observed in its memorandum, the plaintiff who claimed that she was denied an opportunity to speak, clearly testified that she would have said the same things that she had said in her letter which was on record with the Commission by the time of the hearing. When, at the trial plaintiff Palmer was

given her letter written to the Commission she was asked, "and were those the thoughts that you would have expressed to the Planning and Zoning Commission." Her answer was, "I undoubtedly would have said these things yes. I probably would have said more. I probably would have gone on more emotionally . . . ." (Transcript, p. 636).

It is submitted that Betsy Palmer had every opportunity to speak at the January 12 and 13 meetings if, indeed, she was present. The record is barren of any suggestion that she attempted to obtain permission from the Commission to speak and was denied. However, even if this was the case, the effect was harmless inasmuch as she had already put her views forward in a letter to the Commission and further, those same views had been covered many, many times by others of the number approximating 40 people who did speak in opposition to the proposal.

III.

Generally, Appellate Courts are not obliged to state their reasons for denial of Certification or Certiorari.

Petitioners had a full appeal to the lower Courts of Connecticut pursuant to Section 8-8 of the Connecticut General Statutes. The statute provides in part that appeals from the doings of administrative agencies shall be taken to the Superior Court of Connecticut as was done in this case. The statute further provides that, "There shall be no right to further review except to the Supreme Court by certification for review, upon the vote of two judges of the Supreme Court so do certify and under such other rules as the judges of the Supreme Court establish." There is no Connecticut statute or rule requiring the Justices of its Supreme Court to state on the record its reasons for either granting or

denying certification anymore than there is any requirement that the Justices of the Supreme Court of the United States set forth in each and every case their reason or reasons for granting or denying a writ of certiorari. "Certification by the Supreme Court on petition is not a matter of right but of sound judicial discretion and will be allowed only where there are special and important reasons therefore. . . ." Connecticut Practice Book Section 3137. The Petitioners claim that their due process rights to appellate review were prejudiced because Connecticut Supreme Court did not state any reasons for its denial of certification is without merit.

CONCLUSION

This is a routine zoning case. A small group of persons living near and far from the property were unhappy with the result and have taken successive appeals. None of the three questions posed in the petition for writ of certiorari are substantial or even serious Federal questions. Indeed, petitioners do not even claim that they are substantial Federal questions, but merely point out that they made "constitutional claims" during various proceedings below. The petition for writ of certiorari to the Supreme Court of the State of Connecticut should be denied.

Respectfully submitted,

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April 16, 1979

APPENDIX A

[Statute and Connecticut Practice Book Rule Cited]

(1)

CONNECTICUT GENERAL STATUTES

§ 8-8. Appeal from board to court. Review by supreme court.

... The provisions of chapter 902 to the contrary notwithstanding, there shall be no right to further review except to the supreme court by certification for review, upon the vote of two judges of the supreme court so to certify and under such other rules as the judges of the supreme court establish. The procedure on such appeal to the supreme court shall, except as otherwise provided herein, be in accordance with the procedures provided by rule or law for the appeal of judgments rendered by the superior court unless modified by rule of the judges of the supreme court.

(2)

CONNECTICUT PRACTICE BOOK RULES

§ 3137. Basis for Certification.

Certification by the supreme court on petition is not a matter of right but of sound judicial discretion and will be allowed only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicates the character of the reasons which will be considered:

(1) Where the court below has decided a question of substance not theretofore determined by the supreme court or has decided it in a way probably not in accord wih applicable decisions of the supreme court.

(2) Where the decision under review is in conflict with other decisions of the court below.

(3) Where the court below has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by any other court, as to call for an exercise of the supreme court's supervision.

(4) Where a question of great public importance is involved.

(5) With respect only to appeals from the appellate session, where the judges of the appellate panel are divided in their decision or, though concurring in the result, are unable to agree upon a common ground of decision.

APPENDIX B

[Judgment and Proceedings Below]

(1)

NO. 19151 L

THOMAS W. COHN, ET AL : SUPERIOR COURT
vs. :
CITY OF NORWALK PLANNING
COMMISSION, ET AL :

NO. 19849 L JUDICIAL DISTRICT
OF FAIRFIELD

THOMAS W. COHN, ET AL :
vs. :
CITY OF NORWALK PLANNING
& ZONING COMMISSION, ET AL : AT STAMFORD

NO. 20023 L

THOMAS W. COHN, ET AL
vs. NOVEMBER 14, 1978
STATE TRAFFIC COMMISSION,
ET AL

MEMORANDUM OF DECISION

. . . A local commission should have reasonable flexibility in allowing a small, carefully regulated industry (research and development) to exist in one section of town which will preserve the rural, residential character of the entire town and that decision should be resolved by the town's legislative body which has the

responsibility and authority to determine the course of zoning needs, without interference by the courts. *Jablon v. Town Planning & Zoning Commission of Newtown,* 157 Conn. 434, 254 A.2d 914 (1969). Its decision to amend the town's zoning regulation cannot be considered spot zoning even if it singles out a relatively small piece of land and its decision should not be disturbed unless its action is clearly contrary to a rational development of a comprehensive plan, particularly where it appears from a lengthy record that the judgment of the Commission was reasonably, fairly and honestly reached after giving consideration to the public welfare. *Jablon v. Town Planning & Zoning Commission of Newtown,* supra.

Based on the transcript, and all of the Exhibits in Case Number 1, the change in zone adopted by the Commission promotes the general welfare in a reasonable manner and the reasons for such change are reasonably and fairly supported by such evidence. . . .